TUNG LIENG (PENANG) TRADING CO. SDN. BHD. v. LIEW CHEONG THYE

[S.C. (Abdul Hamid Ag.L.P, Seah & Syed Agil Barakbah S.C.JJ.) March 24, 1986]

[Kuala Lumpur – Supreme Court Civil Appeal No. 257 of 1985]

Practice and Procedure – Certificate by Judge that he required no further argument – Whether judge functus officio – R.H.C. 1980, O.56 r.2(2) – Courts of Judicature Act, 1964, s. 68(2).

The question in this appeal was as to the effect of a certificate issued by a Judge that he required no further argument under section 68(2) of the Courts of Judicature Act, 1964. In this case the learned Judge purported to vary the terms of his Order made in Chambers after he had granted a certificate that he required no further argument when hearing an application for a stay of execution.

Held: the learned Judge was *functus officio* after he had issued a certificate under section 68(2) of the Courts of Judicature Act, 1964, that he required no further argument.

Cases referred to:

(1) *Re Harrison's Share under Settlement* [1954] 2 All E.R. 453.

(2) *Bank of America National Trust and Savings Associations* v. *Chai Yen* [1980] 1 M.L.J. 198.

(3) *Datin Zaleha & Ors.* v. *Perkasa Trading Sdn. Bhd.* [1985] 1 M.L.J. 41.

SUPREME COURT.

Miss Catherine Choo for the appellant.
Yusuf Khan for the respondent.

Seah S.C.J. (delivering the Judgment of the Court): This appeal raises a short but interesting practice point as to the effect of a certificate issued by a Judge that he required no further argument under section 68(2) of the Courts of Judicature Act 1964.

For the appellant it was submitted that the learned Judge was functus officio. This was denied by learned Counsel for the respondent who argued on the authority of *Re Harrison's Share Under Settlement case*[1] that until the Order in chambers had been perfected and extracted the learned Judge had the power to review and amend it. In our opinion, the facts in *Re Harrison* case are very different from the facts of the present case. There, at the time of the hearing of an application on behalf of infants and unborn and unascertained persons for the approval of the court to a scheme affecting the trusts of a settlement, there was before the House of Lords a similar case. The Judge in chambers made an order approving the scheme but before the Order had been drawn up the House of Lords announced its decision, which indicated that the court lacked jurisdiction to make the order which had been made. The Judge recalled his Order and invited the parties to argue the matter further. Roxburgh J. held that he was entitled to recall the Order on his own initiative, and in view of the fact that persons not parties to the application were affected by the Order, it was his duty to do so. Here, the learned Judge purported to vary the terms of his Order made in chambers after he had granted a certificate that he required no further argument when hearing an application for a stay of execution. In our judgment, the learned Judge had no jurisdiction to do this after he had certified in writing under section 68(2) that he required no further argument. This is made abundantly clear by the implied construction of the last sentence of Order 56 rule 2(2) of the Rules of the High Court 1980 which provides that "If the Judge hears further argument, he may set aside the Order previously made and make such other Order as he thinks fit". Moreover, when the certificate issued under section 68(2) has been communicated to the appellant or his solicitor, the time of appeal begins to run as from that date [see *Bank of America National Trust & Savings Associations* v. *Chai Yen*[2] and *Datin Zaleha & Ors.* v. *Perkasa Trading Sdn. Bhd.*[3]]. We therefore rule that the learned Judge was *functus officio* after he had issued a certificate under section 68(2) of the Courts of Judicature Act 1964 that he required no further argument. For the reasons given above, we set aside the Order dated June 7, 1985 purporting to vary the terms of the Order of April 30, 1985. We direct that the application for a stay of execution be heard by another Judge of the High Court at Ipoh. The appeal is allowed with costs to the appellant. The deposit be refunded to the appellant.

Appeal allowed.

Solicitors: *Cheang Lee & Ong; Wong Lim & Co.*